

M E M O R A N D U M

TO: BOSTON REDEVELOPMENT AUTHORITY BOARD
FROM: ARTHUR E. SHEA, CHIEF GENERAL COUNSEL
DATE: MARCH 1, 1984
SUBJECT: OPINION OF THE CHIEF GENERAL COUNSEL

This opinion is in response to a vote of the Board on February 9, 1984, requesting an explanation of the applicability of the recent Massachusetts Supreme Judicial Court decision in the case of Frank Bronstein et al. v. The Prudential Insurance Company of America et al. 390 Mass. 701 (1984).

The plaintiffs in the Bronstein case are residential tenants in three of Prudential's rental apartment buildings located at the Prudential Center. In essence, these plaintiffs sought to prevent Prudential from converting the rental apartments in the three buildings into cooperatives. The case was commenced in Boston Housing Court and removed at Prudential's request, to Federal District Court on the ground of diversity.

On April 25, 1983, in the context of a Motion to Dismiss by Prudential, the Federal District Court noted that the case may turn on questions of Massachusetts law and therefore certified two questions to the Massachusetts Supreme Judicial Court. In January of this year, that Court responded with the above-cited Opinion.

The two questions certified to the Massachusetts Supreme Judicial Court were: (1) "Does the provision of Massachusetts General Laws Chapter 121A Section 18D that states 'No units of rental housing constructed as part of an approved project under this chapter may be converted to condominiums pursuant to this section,' apply as well to conversion of rental housing to cooperatives?"; and (2) "Assuming question one is answered in the affirmative, is Section 18D, which does not apply to 'projects undertaken' prior to 1975, applicable to a proposed conversion of Prudential apartments to cooperatives, where the Prudential apartments were built prior to 1975, but the application for their conversion to cooperatives was filed after 1975?".

The Court answered the first question in the negative, noting that condominiums and cooperatives are each separate and distinct legal entities and that the term "condominium" as set forth in Section 18D cannot properly be construed to include cooperatives.

Even though the Court answered question one in the negative, the decision went on to specifically address question two. Here the Court concluded that a conversion by Prudential to either condominiums or cooperatives would constitute a fundamental change within the meaning of Statutes 1960, Chapter 652, Section 13. Because Section 13 requires that an application for a fundamental change "shall proceed as if such application to change were an application for the original approval of the project", the Court further concluded that the restrictions of Section 18D would apply, even though the Prudential project was approved and constructed before the effective date of the 1975 amendment. Finally, the Court held that in the case of the Prudential apartments, any conversion to condominiums would be prohibited by the language of Section 18D.

The question naturally arises as to the applicability of the Bronstein case to other matters under the jurisdiction of the Boston Redevelopment Authority. Two specific rules from the Bronstein case can clearly be applied to any Chapter 121A project designated for rental housing. First, no rental housing constructed and existing under the terms of Chapter 121A may be converted to condominiums. Second, the conversion of such rental housing to cooperatives constitutes a fundamental change within the meaning of Statutes 1960, Chapter 652, Section 13, so that any such application by a 121A entity must be treated as if it were an initial application, requiring the full statutory approval process.

The BRA Board has further asked if the Bronstein case can be applied to projects within Urban Renewal Plans created under the authority of M.G.L. Chapter 121B.

On its face, nothing in the Bronstein case goes this far. The entire record concerns only a Chapter 121A project and the direct applicability does not go beyond the facts stated therein -- but the language of the Court can be instructive when interpreting or construing similar yet different statutes.

Chapter 121B authorizes the creation of Urban Renewal Plans. Moreover, Section 46 (d) empowers the BRA "to enforce restrictions and controls contained in any urban renewal plan ...".

It is within this context that I feel the language of the Bronstein case is of some relevance.

Bronstein specifically declares that the conversion of rental housing to either condominiums or cooperatives constitutes a "fundamental change in the project" within the meaning of Statutes 1960, Chapter 652, Section 13, even though the conversion will result in residential use, because the new residential use "will not serve the same demands from the same tenants".

Clearly, the BRA has extensive review authority over urban renewal plans. This is found not only in Chapter 121B, but also in prior decisions of the Court (See Department of Community Affairs vs. Boston Redevelopment Authority et al. 362 Mass. 602 (1972)).

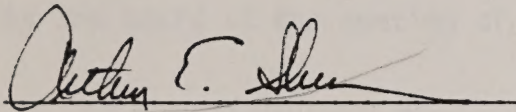
In fact, virtually all Urban Renewal Plans themselves give the BRA extensive review authority over changes in projects which they have approved. Therefore, if a fundamental change in the plan itself is proposed, the BRA Board would have absolute authority to prevent the change.

Whether a specific change would constitute a fundamental change in an Urban Renewal Plan is a question of fact, not law. However, the Department of Community Affairs case provides clear guidelines for this decision: "Any assessment of the magnitude of the ... revisions must be made with reference to the plan as a whole, not simply with reference to the affected parcel. The plan has been developed for a large, integrated area; even a change which totally altered one small parcel might have only a negligible effect on the overall nature of the development."

At minimum, the Bronstein case can be said to illuminate a previously unexercised element of the Board's authority to interpret and enforce the requirements of these Plans. If a change in form of ownership can amount to a "fundamental change" to a 121A project, clearly, a similar factual situation in the context of a 121B project could amount to such a change as well. If, in the past, the breadth of the Board's authority to so determine was not fully recognized and thus, went unexercised, such prior inaction would in no way limit its present authority.

The Bronstein case should be taken into consideration by the Board in its ongoing process of understanding and carrying out the responsibilities mandated by Chapter 121B. To read Bronstein as establishing a rule of law upsetting the BRA's past interpretations of Chapter 121B is not warranted by any statement in the case itself.

What can be said is that the Bronstein case has brought to our attention a new element the BRA should review in its statutory oversight of Urban Renewal Plans.

A handwritten signature in dark ink, appearing to read "Arthur E. Shea", is written over a horizontal line.

Arthur E. Shea

Chief General Counsel

M E M O R A N D U M

March 1, 1984

TO: BOSTON REDEVELOPMENT AUTHORITY
FROM: ROBERT J. RYAN, DIRECTOR
SUBJECT: OPINION OF THE CHIEF GENERAL COUNSEL

Attached is the Opinion of the Chief General Counsel requested by the Board at the meeting of February 9, 1984.